IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6402 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURSOTTAM SOMABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6402 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SS PAETL AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Prevention of Blackmarketing and Maintenance

of Supplies of Essential Commodities Act, 1980 ('the Act' for short), the District Magistrate, Mehsana, vide order dated July 25, 2001, Annexure A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is holding retail licence being No. 391/92 for running the fair price shop which is renewed upto 31.12.2001. On 16.7.2001 a Matador bearing registration No. GJ-2U-8659 was intercepted by Mamlatdar, Kadi and Deputy Mamlatdar (Supply), Kadi, near Bhavani Hotel, Karan Nagar, Kadi-Kalol Road, Taluka Kadi. In the said matador 2200 litres (11 barrels) of kerosene was found out which was lifted from M/s. Patel Desai & Sons, Kerosene Dealer vide bill No. 2103 dated 16.7.2001 and necessary entry has been made in godown register at page No.47. During the course of investigation it was revealed that the said matador was going to its opposite route and the explanation given by the petitioner vide statement dated 16.7.2001 was found false on further inquiry. Therefore, the entire stock of blue coloured kerosene was seized. In view of the facts and circumstances, the detaining authority subjectively satisfied no the basis of the investigation report and other materials that unauthorisedly the petitioner was disposing the stock of blue coloured kerosene which was meant for distribution amongst the card holders and thereby he committed breach of sections 3 and 7 of the Essential Commodities Act. The detaining authority considered the aspect that by cancelling or suspending licence of the petitioner his activities cannot be prevented forthwith and also considered that even if criminal complaint is filed, the petitioner may continue his activities by releasing on bail. Therefore, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community it is necessary to detain the petitioner and, therefore, the detaining authority has detained the petitioner in exercise of powers under section 3 (2) of the Act.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. Prajapati,

learned advocate for the petitioner, has restricted his arguments to the point that all the documents which are referred to and relied upon by the detaining authority while passing the detention order were not supplied to the detenu and non-supply of all the documents has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and thereby safeguard enshrined in Article 22 (5) of the Constitution is infringed. To buttress the aforesaid submission, he has drawn the attention of this Court to the representation made by the petitioner on June 30, 2001 which was addressed to the District Magistrate, Mehsana wherein it is categorically mentioned that the detaining authority has relied on the inspection report submitted by the Mamlatdar, Kadi and the detaining authority has considered the same while passing the order of detention but the copy of the same is not supplied to him. Therefore, the detenu requested that copies of those documents may be supplied to him. But mechanically the said representation was rejected by the detaining authority without supplying the documents referred to in the said representation and, therefore, learned advocate for the petitioner has contended that continued detention of the petitioner has become illegal and on this sole ground the petition deserves to be allowed.

5. Mr. S.S. Patel, learned AGP who appears on behalf of respondent Nos.1 to 3 contested the petition by filing reply affidavit which is sworn by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. Similarly, Ms. Davavala, learned advocate for respondent No.4 contested the petition by filing affidavit in reply sworn by S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Patel, learned AGP however does not dispute the fact that the documents which were demanded by the detenu were not supplied by the District Magistrate, Mehsana and therefore urged to pass appropriate orders in light of the contentions raised in the petition.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed therewith and the impugned order.

8. On having perusal of the relevant papers it is seen that the detenu had made a representation on July 30, 2001 to the detaining authority requesting him to

supply relevant documents referred to therein which were referred to and relied upon by the detaining authority, that is, inspection report submitted by Mamlatdar, Kadi. There is no dispute to the fact that the said documents were not supplied by the detaining authority to the detenu. Admittedly these documents are relevant for the purpose of making effective representation to the concerned authority by the detenu which has seriously prejudiced the right of the petitioner of making effective representation and therefore right of the petitioner enshrined under Article 22 (5) of the Constitution is infringed.

9. The Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

10. Similar view is expressed by this Court in the case of Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar, 2000 (2) GLH 540. In view of the judgment of the Supreme Court and this Court, non-supply of the documents pari passu though demanded is violative of Article 22 (5) of the Constitution as it adversely affected the right of the petitioner of making effective representation before the authority concerned. On this sole ground continued detention of the petitioner has become illegal and the impugned order of detention is vitiated. Therefore, the petition is required to be allowed and the detenu is required to be set at liberty forthwith.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)